



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/163331

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on February 26, 2015. The record was held open 7 days to allow the parties time to submit a post-hearing brief.

The issue for determination is whether the agency correctly denied petitioner's application for MA made in September 2014 due to excess assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney John Sage
2835 South Moorland Road
New Berlin, WI 53151-3743

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Miller, ESS

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. Petitioner applied for Institutional MA in September 2014, requesting a backdate of eligibility to July 2014.
3. By November 5, 2014 or December 18, 2014 the agency determined it had received all the necessary verification to determine petitioner's MA eligibility.
4. On February 23, 2015 the agency issued a notice of decision stating that petitioner's application was denied because he was over the asset limit from July 2014-February 2015.
5. The petitioner's asset limit was \$119, 240. The petitioner was under that asset limit in July, August and September 2014.

DISCUSSION

MA rules state that "eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application." Wis. Admin. Code, §DHS 103.08(1); see also *Medical Eligibility Handbook (MEH)* §§2.8.1 and 2.8.2. An application is considered filed when it is delivered to or received by the agency. See *MEH*, §2.6. This means that if the petitioner met the program's eligibility requirements in September 2014 when he applied, he could be eligible retroactive to the July 2014 date he requests if he is also eligible in those previous months. See also Wis. Stat., §§49.46(1)(b) and 49.47(4)(d).

After an MA application is received, verifications are usually necessary. MA rules require recipients to verify relevant information, including assets. See Wis. Admin. Code, §DHS 102.03(3). MA policy allows the agency time to delay their usual 30-day processing period if verifications are necessary. See *MEH*, §2.7.1

The agency here contends that when it received all of the requested verifications in December 2014 (I note that this is the date testified to in hearing, but the post-hearing submittal from the agency states November 5) that it was then able to make an eligibility determination. It then made an eligibility determination for December and all months previous to December because backdated eligibility was requested, and it contends that backdated eligibility is any month prior to the time the agency had all the information necessary to determine eligibility. The petitioner contends that eligibility for MA is determined from the date of application (September) and for any months previous to that, up to three months. The agency performed an asset calculation for April – December 2014. See Exhibit 2. It shows that petitioner was under the asset limit in July, August, and September 2014.

In the end, the date that petitioner submitted the final verification is irrelevant when determining the date he became eligible for benefits. Again, section DHS 103.08(1) of the Wisconsin Administrative Code states that "eligibility shall begin on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application." Submitting a piece of verification cannot be considered an eligibility requirement because this is always done after the application is filed, and if it were an eligibility requirement, one could never become eligible retroactively. This means that MA law bases retroactive eligibility upon the date of application rather than the date the verifications are completed. If the worker believed that the petitioner failed to submit verifications he had the ability to submit, the worker could have closed the file after 30 days (or 40 days if she extended the time for submitting verifications). *MEH*, §2.7.1. She did not do this, but rather kept the application open by indefinitely extending the time the petitioner could submit the requested verifications. Because the application was still active, the petitioner could have been eligible for benefits for up to three months before the date it was filed. Again, there was no dispute that the petitioner was asset eligible in July, August, and September 2014. Accordingly, I find the agency incorrectly denied petitioner's application for MA made in September 2014 due to excess assets.

CONCLUSIONS OF LAW

The agency incorrectly denied petitioner's application for MA made in September 2014 due to excess assets.

THEREFORE, it is

ORDERED

The matter is remanded to the agency so that it can redetermine petitioner's MA eligibility, consistent with this Decision, effective with the September 2014 application, and to issue a notice of decision to petitioner regarding same. These actions shall be taken within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of April, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 14, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney John Sage